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SUPER LAW GROUP, LLC

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Via Certified Mail, Return Receipt Requested

U-Haul Co. of New York and Vermont, Inc.
139 Broadway
Albany, NY 12202

EXECUTIVE SECRET

Jeffrey S Sonberg, CEO
U-Haul Co. of New York and Vermont, Inc.
230 West 230th St.
Bronx, New York, 10463

Mark Zoller, Principal
U-Haul Co. of New York and Vermont, Inc.
139 Broadway
Albany, NY 12202

U-Haul Business Consultants Inc.
2727 N. Central Avenue
Phoenix, AZ 85004

U-Haul International, Inc.
2727 N. Central Avenue
Phoenix, AZ 85004

Edward J. Shoen
U-Haul Business Consultants Inc.
U-Haul International, Inc.
2727 N. Central Avenue
Phoenix, AZ 85004

Amerco
1325 Airmotive Way
Suite 100
Reno, Nevada 89502

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear U-Haul Co. of New York and Vermont, Inc, Jeffrey S. Sonberg, Mark Zoller, U-Haul Business Consultants, Inc., Edward J. Shoen, U-Haul International, Inc., and Amerco:

We are writing on behalf of Riverkeeper, Inc.,¹ ("Riverkeeper") to notify you of Riverkeeper's intent to file suit against U-Haul Co. of New York and Vermont, Inc, Jeffrey S. Sonberg, Mark Zoller, U-Haul Business Consultants, Inc., Edward J. Shoen, U-Haul International, Inc., and Amerco (collectively, "U-Haul") pursuant to Section 505(a) of the federal Clean Water Act ("CWA")² for violations of the CWA.

Riverkeeper intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Northern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.³

Riverkeeper intends to take legal action because U-Haul is discharging polluted stormwater from its industrial facility at 139 and 127 Broadway, Albany, NY ("the Facility") to the waters of the United States without a permit in violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁴ Further, U-Haul has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁵ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p) and 40 C.F.R. §§ 122.26(c)(1) and (c)(1).

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into the Hudson River and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁶ pollution accounts for more than half of the total pollution entering

¹ Riverkeeper, Inc. is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Riverkeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River and its ecosystem, as well as the watersheds that provide New York City with its drinking water. Riverkeeper was originally founded by the Hudson River Fisherman's Association, a group of fishermen concerned about the ecological state of the Hudson River, and the effect of its polluted and degraded condition on fish. Riverkeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. Riverkeeper has more than 4,500 members, including dozens in Albany, many of whom reside near to, use, and enjoy the Hudson River, whose waters that are polluted by industrial stormwater runoff.

² 33 U.S.C. § 1365(a).

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

⁴ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility into the Hudson River. The Hudson River flows from the High Peaks area of the Adirondack Mountains south through 17 New York counties to the Atlantic Ocean. DEC has classified the portion of the Hudson River that flows through Albany as a class C water.⁸ Under New York’s Water Quality Standards, a waterbody that is designated as C shall be suitable for fishing, primary and secondary contact recreation, and fish, shellfish, and wildlife propagation and survival.⁹ The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.¹⁰

Numerous sections of the Hudson River consistently fail to meet state water quality standards, including the section into which the Facility discharges. DEC has designated the section of the Hudson River in and near Albany as impaired pursuant to Section 303(d) of the CWA¹¹ for failure to support fishing due to the presence of PCBs.¹² In its Waterbody Inventory for this portion of the Hudson River, DEC notes that in addition to PCBs, “[f]ish consumption use in this portion of the Lower Hudson is impaired by elevated levels of priority organics (PCBs, dioxin), heavy metals (cadmium) and other toxics.”¹³ DEC also reports that all other uses of the Hudson River in this area are stressed by trash and pathogens in the river, invasive species, and thermal changes. DEC notes that stormwater runoff is one source of the pollution that is stressing the Hudson River.¹⁴

The federal, state, and local governments have made cleanup and restoration of the Hudson River a priority. In 2009, at the direction of the U.S. Environmental Protection Agency (“EPA”), GE began removal of PCB laden sediment from over 40 miles of the Hudson River north of Albany.

⁷ See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A (last visited Feb. 26, 2015).

⁸ See 6 N.Y.C.R.R. § 858.4.

⁹ See 6 N.Y.C.R.R. § 701.

¹⁰ See 6 N.Y.C.R.R. §§ 702, 703.

¹¹ 33 U.S.C. § 1313(d).

¹² *Id.* at 36.

¹³ NY DEC, Waterbody Inventory for Middle Hudson River Watershed at 338 (2008), *available at* http://www.dec.ny.gov/docs/water_pdf/pwllhudmidd.pdf.

¹⁴ *Id.*

The six Capital Region communities have joined to develop a long-term control plan that addresses discharges of raw sewage into the river from combined sewer overflows – a plan that will cost in excess of \$145 million to implement. All of these efforts are aimed at cleaning up the Hudson River and mobilizing public and private efforts to restore the River to a healthier state. It is time for U-Haul to join fully in this broader effort to restore the biological integrity of the Hudson River. At a minimum, U-Haul must stop illegally discharging polluted stormwater and other effluents.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. U-Haul Is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁵ U-Haul's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA¹⁶ and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁷ The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, by (a) storing, maintaining, and fueling trucks on site and storing vehicles outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges.

U-Haul's activities at the Facility include but are not limited to storing trucks, trailers, and other freight vehicles and vehicle fueling and maintenance. Riverkeeper believes that the Facility includes fueling pumps and vehicle maintenance equipment. In carrying out activities at the Facility, U-Haul engages in vehicle maintenance, and in storage and handling of materials in a manner that exposes pollutants to precipitation and snowmelt. Any gasoline dripped on the ground at the Facility in the process of vehicle fueling will be picked up by stormwater or snowmelt running across the property. Vehicle maintenance and repair activities ranging from fluid changes or top-ups to parts replacements release a variety of pollutants, both solid and liquid, onto the surface of the Facility. The stormwater discharged into the Hudson River can

¹⁵ See CWA §§ 301(a), 402.

¹⁶ 33 U.S.C. § 1362(12).

¹⁷ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

bring solids that suspend or dissolve, oil, hydraulic fluids, heavy metals, grease, and other pollutants into the Hudson River.¹⁸

These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because U-Haul fails to adequately fence, shelter, and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Stormwater picks up sediment, oil, grease, metals, paints, plastic, solvents, nutrients, pathogens, particulates, dust, and other solids that can dissolve or suspend in stormwater, and other trash and pollutants associated with the Facility's operations. Stormwater, objects, and debris are then conveyed off-site and into waters of the United States. Further, vehicles at the Facility track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, waters of the United States.

Polluted stormwater discharges flow from the Facility into the Hudson River, which is a "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, a "navigable water" as defined in Section 502(7) of the CWA. Stormwater may enter the separate sewer system, which discharges to the Hudson River. U-Haul does not have a NPDES permit for these discharges of pollutants. Thus, U-Haul is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

B. U-Haul is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

U-Haul is engaged in the business of repairing and storing its trucks, trailers, and freight vehicles and providing self storage at the Facility and therefore is an industrial discharger engaged in trucking and courier services Standard Industrial Classification ("SIC") Major Group 42¹⁹, which is an industrial activity included in Sector P of the General Permit. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, U-Haul must apply for coverage under the General Permit or an individual NPDES permit for U-Haul's discharge of polluted stormwater. In addition, U-Haul must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under

¹⁸ See EPA, "Industrial Stormwater Fact Sheet Series, Sector P: Land Transportation and Warehousing Facilities," available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_p_transportationfacilities.pdf.

¹⁹ Amerco claims that its activities fall within SIC Code 751, which includes automotive rental and leasing without driver. However, the operation at this site is combined with storage, which is identified as SIC Code 4214.

the General Permit or an individual permit, U-Haul is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).²⁰

To be eligible to discharge under the General Permit, U-Haul must submit to DEC a registration form called a "Notice of Intent."²¹ Notice of Intent forms are available online from DEC.²² To register, U-Haul is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.²³ U-Haul has failed to prepare and file a Notice of Intent or an application for an individual permit.²⁴

C. U-Haul is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, U-Haul must comply at all times with the requirements of the General Permit (or an individual permit).²⁵ By discharging stormwater associated with industrial activity without complying with the General Permit, U-Haul is violating CWA Sections 301(a) and 402(a) and (p).²⁶ The main General Permit requirements that U-Haul has failed and continues to fail to meet are explained further below.

1. U-Haul has not developed and implemented a Stormwater Pollution Prevention Plan.

²⁰ Sections 301(a) and 402(a) and (p) make it unlawful for U-Haul to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require U-Haul to apply for a NPDES permit that covers U-Haul's discharge of stormwater associated with industrial activity.

²¹ See General Permit, Part I.E.3. In notifying U-Haul that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Riverkeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

²² See http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

²³ See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

²⁴ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

²⁵ This section discusses the compliance requirements of the General Permit. If U-Haul elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus U-Haul will still be required to comply with all of the following.

²⁶ Sections 301(a) and 402(a) and (p) make it unlawful for U-Haul to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

Before submitting a Notice of Intent, U-Haul must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.²⁷ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²⁸

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.²⁹

U-Haul has not developed and implemented a legally compliant SWPPP, as required by Part III of the General Permit.³⁰

2. U-Haul has not implemented control measures and Best Management Practices that meet the best available technology standard.

U-Haul cannot legally discharge stormwater under the General Permit until U-Haul implements mandatory general and sector-specific control measures called Best Management Practices ("BMPs") in order to minimize the discharge of pollutants from the Facility.³¹ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that "[t]he owner or operator must select, design, install, and implement control measures (including best management practices)," in accordance with good engineering practices, to meet the effluent limits contained in the permit.³² The General Permit's effluent limits include both numeric limits specific to certain sectors,³³ as well as non-numeric technology-based effluent limits that apply to all facilities.³⁴ These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater³⁵ and minimizing the discharge of pollutants in stormwater³⁶ "to the extent achievable using control measures

²⁷ See General Permit Part III.B.

²⁸ See General Permit Part III.A.

²⁹ See General Permit Part III.C.

³⁰ Riverkeeper believes no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

³¹ See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

³² General Permit Part I.B.1.a; see also Part III.C.7 ("The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.").

³³ See General Permit, Part VIII.

³⁴ See General Permit, Part I.B.1.a.2.

³⁵ See General Permit, Part I.B.1.a.2.a.

³⁶ See General Permit, Part I.B.1.a.2.f.

(including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”³⁷

U-Haul has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

3. U-Haul has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.

U-Haul must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³⁸ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³⁹ Records of this inspection must be kept for five years.⁴⁰

In addition, qualified facility personnel must carry out routine inspections at least quarterly.⁴¹ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.⁴² Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.⁴³ In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;⁴⁴
- conduct visual monitoring of stormwater discharges at least quarterly;⁴⁵
- perform an annual dry weather inspection to detect non-stormwater discharges;⁴⁶
- inspect, sample and monitor discharges from coal pile runoff;⁴⁷
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴⁸

³⁷ General Permit, Part I.B.1.

³⁸ See General Permit, Part IV.A.1

³⁹ See General Permit, Part IV.A.1

⁴⁰ See General Permit, Part IV.A.2

⁴¹ See General Permit, Part III.C.7.b.2.

⁴² See General Permit, Part III.C.7.b.1 and b.3.

⁴³ See General Permit, Part IV.B.3.

⁴⁴ See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

⁴⁵ See General Permit, Part IV.B.1.a.

⁴⁶ See General Permit, Part IV.B.1.b.

⁴⁷ See General Permit, Part IV.B.1.d.

- document storm events during which any samples are taken;⁴⁹
- document all of these monitoring activities;⁵⁰
- keep records of the monitoring with the Facility's SWPPP;⁵¹ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁵²

Because U-Haul engages in industrial activities associated with Sector P, sampling is required for:

- Oil & Grease;
- Chemical Oxygen Demand (COD);
- Benzene;
- Ethylbenzene;
- Toluene; and
- Xylene.⁵³

Riverkeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁵⁴ This notice provides U-Haul with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

U-Haul has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. U-Haul also has failed to retain records and submit monitoring reports to DEC as required by, at least, Parts IV and VIII of the General Permit.

4. U-Haul has failed to comply with additional requirements located in Part VIII of the General Permit.

As noted above, the General Permit contains various requirements specific to Sector P. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement to describe and assess in U-Haul's SWPPP the potential for the following to contribute pollutants to stormwater discharges:

⁴⁸ See General Permit, Part IV.B.1.f.

⁴⁹ See General Permit, Part IV.B.2.c.

⁵⁰ See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, *see generally* Part IV.E.

⁵¹ See General Permit, Part IV.E.

⁵² See General Permit, Part IV.B.1 and 2 and Part IV.C.

⁵³ See General Permit, Part VIII, Sector P.

⁵⁴ See General Permit, Part VIII.

- On-site waste storage or disposal;
- Dirt/gravel parking areas for vehicles awaiting maintenance; and
- Fueling areas.
- A requirement that the following areas/activities be included in all inspections:
 - Storage area for vehicles /equipment awaiting maintenance;
 - Fueling areas;
 - Indoor and outdoor vehicle/equipment maintenance areas;
 - Material storage areas;
 - Vehicle/equipment cleaning areas; and
 - Loading/unloading areas.
- A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable:
 - Used oil and spent solvent management;
 - Fueling procedures;
 - General good housekeeping practices;
 - Proper painting procedures; and
 - Used battery management.
- A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - The use of drip pans under vehicles and equipment;
 - Indoor storage of vehicles and equipment;
 - Installation of berms or dikes;
 - Use of absorbents;
 - Roofing or covering storage areas; and
 - Cleaning pavement surface to remove oil and grease.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The SWPPP shall document consideration of the following measures (or their equivalents):
 - Covering the fueling area;
 - Using spill/overflow protection and cleanup equipment;
 - Minimizing stormwater run-on/runoff to the fueling area;
 - Using dry cleanup methods; and
 - Treating and/or recycling collected stormwater runoff.
- A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to

prevent contamination of stormwater, and plainly labelled (e.g., “used oil,” “spent solvents,” etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents):

- Indoor storage of the materials;
 - Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas;
 - Using dry cleanup methods; and
 - Treating and/or recycling the collected stormwater runoff.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Performing all cleaning operations indoors;
 - Covering the cleaning operation;
 - Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and,
 - Treating and/or recycling the collected stormwater runoff.
 - A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Performing maintenance activities indoors; using drip pans;
 - Keeping an organized inventory of materials used in the shop;
 - Draining all parts of fluids prior to disposal;
 - Prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems;
 - Using dry cleanup methods;
 - Treating and/or recycling collected stormwater runoff; and,
 - Minimizing runoff of stormwater to maintenance areas.⁵⁵

U-Haul’s activities are included in the definition of industrial activity to which the CWA applies. Therefore, U-Haul must obtain coverage under and comply with the requirements of the General Permit, including those specific to U-Haul’s industrial activities, as described in Part VIII and outlined above. U-Haul has failed to obtain coverage under the General Permit and comply with these additional requirements.

5. U-Haul is clearly violating the Clean Water Act.

⁵⁵ See General Permit, Part VIII, Sector P.

In sum, U-Haul discharge of stormwater associated with industrial activities without a permit, U-Haul's failure to apply for permit coverage, and U-Haul's failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

U-Haul Co. of New York and Vermont, Inc., Jeffrey S. Sonberg, Mark Zoller, U-Haul Business Consultants, Inc., Edward J. Shoen, U-Haul International, Inc., and Amerco are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. Riverkeeper believes that one or more of these persons, referred to collectively as "U-Haul," have operated the Facility since prior to 2001.⁵⁶ U-Haul has operational control over the day-to-day industrial activities at this Facility. Therefore, U-Haul is responsible for managing stormwater at the Facility in compliance with the CWA. Riverkeeper hereby puts U-Haul on notice that if Riverkeeper subsequently identify additional persons as also being responsible for the violations set forth above, Riverkeeper intends to include those persons in this action.

IV.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 139 and 127 Broadway, Albany, NY.⁵⁷ The waterfront edge of the Facility runs along and discharges directly into the Hudson River overland, and through a separate sewer system discharge to the Hudson River. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.⁵⁸

V.

⁵⁶ Riverkeeper believes the Facility has operated as in trucking and courier services maintenance facility since well before 2001.

⁵⁷ To avoid any doubt about the location, the property referred to as the Facility and identified by the street address 139 Broadway is the property shown on City of Albany tax map 76.15. The tax map parcel numbers are 76.15-1-2 and 76.15-1-3.

⁵⁸ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g., Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995)

DATES OF VIOLATION

Every day upon which U-Haul has failed to apply for permit coverage since the requirement to obtain permit coverage entered into law is a separate violation of Section 301(a) of the CWA and EPA's regulations implementing the CWA.⁵⁹ These days of violation have continued consecutively since 1992, when the requirement to obtain permit coverage for the discharge of stormwater associated with industrial activity came into effect.

Additionally U-Haul has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day since U-Haul commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if U-Haul seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which U-Haul claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

U-Haul is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Riverkeeper after the date of this Notice of Intent to File Suit.⁶⁰ These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

Riverkeeper will ask the court to order U-Haul to comply with the Clean Water Act, to pay penalties, and to pay Riverkeeper's costs and legal fees.

First, Riverkeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Riverkeeper will seek an order from the Court requiring U-Haul to obtain NPDES permit

⁵⁹ See also 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

⁶⁰ See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.")

coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁶¹ each separate violation of the CWA subjects U-Haul to a penalty not to exceed \$32,500 per day for each violation which occurred prior to January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁶² Riverkeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Riverkeeper will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(914) 478-4501
Attn.: Sean Dixon

VIII.

IDENTIFICATION OF COUNSEL

Riverkeeper is represented by legal counsel in this matter. The name, address, and telephone number of Riverkeeper's attorneys are:

Edan Rotenberg, Esq.
Super Law Group, LLC
411 State Street, #2R
Brooklyn, New York 11217
(212) 242-2355

IX.

⁶¹ 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁶² 40 C.F.R. § 19.2.

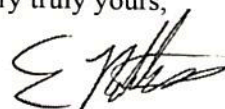
CONCLUSION

The foregoing provides more than sufficient information to permit U-Haul to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁶³

If U-Haul has developed a SWPPP, Riverkeeper requests that U-Haul send a copy to the undersigned attorney.⁶⁴ Otherwise, Riverkeeper encourages U-Haul to begin developing a SWPPP immediately after receiving this letter and ask that U-Haul please inform the undersigned attorney of U-Haul's efforts so that Riverkeeper can work with U-Haul to avoid disputes over the contents of the SWPPP.⁶⁵

During the sixty-day notice period, Riverkeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If U-Haul wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Edan Rotenberg, Esq.
Super Law Group, LLC
411 State Street, #2R
Brooklyn, New York 11217
(212) 242-2355

⁶³ 40 C.F.R. § 135.3(a).

⁶⁴ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁶⁵ Riverkeeper will not send a new notice letter in response to any effort U-Haul makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

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May 26, 2015
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cc:

Gina McCarthy, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Judith A. Enck, EPA Region 2 Administrator
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Joseph Martens, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

U-Haul Co. of New York and Vermont, Inc.
c/o CT Corporation System
111 Either Avenue
New York, NY 10011

U-Haul Business Consultants
c/o CT Corporation System
111 Either Avenue
New York, NY 10011

Amerco
c/o The Corporation Trust Company of Nevada
311 S. Division Street
Carson City, NV 89703